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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 DAVID GENE LANCASTER,

11 Plaintiff.

12 v.

13 DR. PUNG, et al.,

14 Defendants.
15

) No. C 09-3230 MMC (PR)

) **ORDER GRANTING MOTION**
) **FOR RELIEF FROM**
) **JUDGMENT; DIRECTING**
) **CLERK TO REOPEN ACTION**

) **(Docket No. 5)**
)

16 On July 15, 2009, plaintiff, a California prisoner incarcerated at the Correctional
17 Training Facility at Soledad and proceeding pro se, filed the above-titled civil rights action
18 pursuant to 42 U.S.C. § 1983. That same date, the Court notified plaintiff in writing that the
19 action was deficient due to plaintiff's failure to pay the requisite filing fee or, instead, to
20 submit a completed court-approved in forma pauperis ("IFP") application. Plaintiff was
21 further advised that his failure to pay the filing fee or, alternatively, to file a completed IFP
22 application, within thirty days, would result in dismissal of the action. Along with said
23 notice, plaintiff was sent a copy of the court-approved prisoner's IFP application, instructions
24 for completing it, and a return envelope. The notice and other items were sent to plaintiff at
25 the most recent address provided by plaintiff to the court, specifically, the address on his
26 complaint.

27 When more than thirty days had passed since the deficiency notice was sent to
28 plaintiff and he had not filed an IFP application, paid the filing fee or otherwise

1 communicated with the court, the Court, by order filed August 26, 2009, dismissed the action
2 without prejudice and entered judgment accordingly. A copy of the order was sent to
3 plaintiff at the same address to which the deficiency notice had been sent, specifically, the
4 address on plaintiff's complaint.

5 Plaintiff now moves for relief from the Court's order of dismissal on the ground that
6 he never received the deficiency notice. In support of his motion, plaintiff has attached
7 thereto a copy of prison records of plaintiff's incoming and outgoing legal mail during the
8 relevant time period. According to the incoming mail log, plaintiff received no mail from the
9 Northern District between July 8 and August 30, 2009.

10 Good cause appearing, plaintiff's motion is GRANTED and the order of dismissal is
11 hereby VACATED.


12 The Clerk of the Court is DIRECTED to reopen the instant action.

13 Pursuant to 28 U.S.C. § 1915A, the Court will screen plaintiff's complaint by separate
14 order.¹

15 This order terminates Docket No. 5.

16 IT IS SO ORDERED.

17 DATED: August 3, 2010

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MAXINE M. CHESNEY
19 United States District Judge

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¹Plaintiff also has filed a completed application to proceed IFP. The Court has
granted plaintiff's application by separate order filed concurrently herewith.